

## CCRB INVESTIGATIVE RECOMMENDATION

|   |                                     |                                     |   |                                    |                                 |
|---|-------------------------------------|-------------------------------------|---|------------------------------------|---------------------------------|
| Investigator:<br>Charlie Hartford                 | Team:<br>Squad #12                  | CCRB Case #:<br>201803623           | <input type="checkbox"/> Force                        | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |                                     |                                     | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Wednesday, 05/09/2018 1:28 AM | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>79                     | 18 Mo. SOL<br>11/9/2019                               | EO SOL<br>11/9/2019                |                                 |
| Date/Time CV Reported<br>Wed, 05/09/2018 2:51 AM  | CV Reported At:<br>CCRB             | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Wed, 05/09/2018 2:51 AM |                                    |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Subject Officer(s)       | Shield | TaxID  | Command |
|--------------------------|--------|--------|---------|
| 1. POM Michael Temperino | 20500  | 947535 | 079 PCT |
| 2. POM Mohamed Elhanafi  | 15082  | 955897 | 079 PCT |

| Officer(s)              | Allegation   | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.POM Michael Temperino | Abuse: Police Officer Michael Temperino stopped the vehicle in which § 87(2)(b) was an occupant. | § 87(2)(g)                  |
| B.POM Mohamed Elhanafi  | Abuse: Police Officer Mohamed Elhanafi stopped the vehicle in which § 87(2)(b) was an occupant.  | § 87(2)(g)                  |
| C.POM Michael Temperino | Abuse: Police Officer Michael Temperino questioned § 87(2)(b)                                    | § 87(2)(g)                  |
| § 87(4-b), § 87(2)(g)   | § 87(2)(g), § 87(4-b)  | § 87(2)(g)                  |
| § 87(2)(g), § 87(4-b)   | § 87(2)(g), § 87(4-b)  | § 87(2)(g)                  |
| § 87(2)(g), § 87(4-b)   | § 87(2)(g), § 87(4-b)  | § 87(2)(g)                  |
| § 87(2)(g), § 87(4-b)   | § 87(2)(g), § 87(4-b)  | § 87(2)(g)                  |

### Case Summary

On May 9, 2018, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On May 9, 2018, at 1:28 a.m., in the vicinity of § 87(2)(b) in Brooklyn, Police Officers Michael Temperino and Mohamed Elhanafi of the 79<sup>th</sup> Precinct stopped the vehicle in which § 87(2)(b) was an occupant (**Allegations A and B: Abuse of Authority, § 87(2)(g)** PO Temperino questioned § 87(2)(b) (**Allegation C: Abuse of Authority, § 87(2)(g)** PO § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

This case contains video evidence (BR 20-22).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Michael Temperino stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Mohamed Elhanafi stopped the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated during his verified interview that at approximately 1:28 a.m. on May 9, 2018, he was followed by a black unmarked police vehicle for several blocks before being pulled over outside of § 87(2)(b) in Brooklyn (BR 01). § 87(2)(b) was driving a black Dodge Charger with tints on the rear windshield and rear side windows during the incident. During an interview for a previous CCRB case, § 87(2)(b) stated that this vehicle originally had tinted front windows as well; however, he had these windows replaced prior to the incident to avoid being repeatedly pulled over by the police (BR 02). In his statement regarding this incident, § 87(2)(b) alleged that two officers, identified by the investigation as PO Elhanafi and PO Temperino, approached § 87(2)(b) at which time PO Elhanafi informed § 87(2)(b) that he had been pulled over for having tinted front windows.

§ 87(2)(b)'s initial complaint was consistent with his verified statement (BR 19). However, in his initial complaint, § 87(2)(b) alleged that he was approached by three or more officers, and stated that the officers cited his tinted windows in general as the reason for the stop, as opposed to specifying the windows in the front of his car. During a phone call prior to his interview, § 87(2)(b) stated that he did not know what percentage of light transmittance is permitted by his tinted rear windows (BR 03).

A photograph of § 87(2)(b)'s vehicle, taken by the undersigned investigator following § 87(2)(b)'s verified interview, confirms that § 87(2)(b)'s rear windows are in fact extremely dark (BR 06).

PO Temperino was identified as a subject of this allegation due to documentation provided by IAB showing that PO Temperino ran a warrant check on § 87(2)(b)'s license at 1:28 a.m. on May 9, 2018 using his departmental cell phone (BR 07). During his CCRB interview, PO Temperino identified PO Elhanafi as his sole partner on the date of incident (BR 04).

Both PO Temperino and PO Elhanafi stated that he they had no recollection of this incident (BR 04 and 05). However, PO Temperino affirmed that there would be no reason for IAB documentation to indicate that he had checked § 87(2)(b)'s license for open warrants if he had not personally interacted with § 87(2)(b) (BR 04). Upon being presented with a photograph of § 87(2)(b)'s vehicle, both officers stated that his rear windows appeared to be illegally tinted (BR 04-06). During their interviews, both officers demonstrated familiarity with New York State law as it pertains to tinted windows, and cited substantial experience regarding the estimation of excessive tints (BR 04 and 05).



201803623\_20180920\_1740\_DM.mp4

Surveillance footage obtained from § 87(2)(b) in Brooklyn depicts an unmarked police vehicle stopping a vehicle matching the description of § 87(2)(b)'s vehicle. The original footage may be reviewed at BR 20, a summary of that footage may be reviewed at BR 21, and a SnagIt file capturing the relevant portions of that footage may be reviewed at BR 22. Due to the poor quality of the footage and the distance between the camera and the location of the stop, no interaction between § 87(2)(b) and officers is clearly depicted in this footage.

New York State Vehicle and Traffic Law Section 365, 12-a(b)(3) prohibits individuals from driving vehicles with rear side windows that permit light transmittance of less than seventy percent if that vehicle is classified as a station wagon, sedan, hardtop, coupe, hatchback or convertible (BR 08).

While neither PO Elhanafi nor PO Temperino recalled stopping § 87(2)(b) stated during his interview that the officers told him that he was being stopped due to his excessively tinted windows. Both PO Elhanafi and PO Temperino stated during their CCRB interviews that § 87(2)(b)'s rear windows appeared excessively tinted, and both officers claimed credible experience in making such an estimation. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Michael Temperino questioned § 87(2)(b)**

§ 87(2)(b) stated during his verified interview that after he provided his ID to PO Elhanafi, PO Elhanafi and PO Temperino returned to their vehicle (BR 01). The officers then returned, at

which time an officer identified as PO Temperino began asking questions of § 87(2)(b) including whether § 87(2)(b) had guns or drugs in his vehicle.

§ 87(2)(b)'s original complaint was consistent with his verified interview (BR 19). In his initial complaint, however, § 87(2)(b) alleged that he was questioned regarding criminal activity by both PO Temperino and PO Elhanafi. § 87(2)(b) also provided additional details regarding PO Temperino's role in the stop which he did not provide during his sworn statement; specifically, that PO Elhanafi handed § 87(2)(b)'s driver license to PO Temperino, that PO Temperino checked § 87(2)(b)'s license for open warrants, and that PO Temperino questioned § 87(2)(b) after he handed the license back to § 87(2)(b).

As noted previously, neither PO Temperino nor PO Elhanafi had any recollection of this incident (BR 04 and 05). During his CCRB interview, however, PO Temperino professed to routinely asking civilians whether they are in possession of narcotics or firearms during vehicle stops, and denied there being specific factors that would cause him to engage in this line of questioning (BR 04).

PO Temperino was identified as the subject of this allegation due to his role in the interaction and his relative resemblance to the description provided by § 87(2)(b) (BR 01, BR 09 and BR 10). Please see BR 09 for a detailed discussion of officer identification.

In People v Garcia, 20 NY3d 317 [2012], the Court of Appeals of New York ruled that officers may not ask questions which would lead an individual to believe they are suspected of a crime during routine car stops absent a founded suspicion of criminality (BR 11).

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g), § 87(4-b)  
[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[Redacted text block]

[Redacted text block]

§ 87(2)(b), § 87(2)(g), § 87(4-b)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

**Civilian and Officer CCRB Histories**

- § 87(2)(b) [Redacted text block]
- [Redacted text block]
- [Redacted text block]
- [Redacted text block]
- [Redacted text block]

- § 87(2)(b) [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- PO Temperino has been the subject of two allegations in two additional CCRB cases over the course of his 10 years as a member of the NYPD, § 87(2)(g) [REDACTED]  
[REDACTED]
- PO Elhanafi has been the subject of 10 allegations in three additional CCRB cases over the course of his four years as a member of the NYPD, § 87(2)(g) [REDACTED]  
[REDACTED]

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) [REDACTED] rejected mediation (BR 01).
- A request filed with the Office of the New York City Comptroller determined that as of December 14, 2018, § 87(2)(b) [REDACTED] had not filed a Notice of Claim regarding this incident (BR 24).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad No.: \_\_\_\_\_

|               |                    |                             |               |
|---------------|--------------------|-----------------------------|---------------|
| Investigator: | _____<br>Signature | _____<br>Print Title & Name | _____<br>Date |
|---------------|--------------------|-----------------------------|---------------|

|               |                    |                             |               |
|---------------|--------------------|-----------------------------|---------------|
| Squad Leader: | _____<br>Signature | _____<br>Print Title & Name | _____<br>Date |
|---------------|--------------------|-----------------------------|---------------|

|           |                    |                             |               |
|-----------|--------------------|-----------------------------|---------------|
| Reviewer: | _____<br>Signature | _____<br>Print Title & Name | _____<br>Date |
|-----------|--------------------|-----------------------------|---------------|